

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
GREENSBORO DIVISION**

BANILLA GAMES, INC. and  
GROVER GAMING, INC.,

Plaintiffs,

1:19-cv-1113

v.

TNT AMUSEMENTS, LLC,

Defendant.

**DEFENDANT TNT AMUSEMENTS, LLC'S  
VERIFIED ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES the defendant, TNT AMUSEMENTS, LLC (the "Defendant"), by and through its counsel and pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure, hereby answers and otherwise responds to the Verified Complaint filed by the Plaintiffs, BANILLA GAMES, INC. and GROVER GAMING, INC. (the "Plaintiff"). Defendant's answer and responses are made without waiving, and expressly reserving, all rights it has to file dispositive motions addressed to some or all of the claims asserted in the Complaint. Except as expressly admitted herein, each and every factual allegation in the Complaint is denied.

**PARTIES, JURISDICTION, AND VENUE**

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, and therefore denies them.
2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Complaint, and therefore denies them.
3. The allegations contained in Paragraph 3 of the Complaint are admitted.
4. The allegations contained in Paragraph 4 of the Complaint are admitted.

5. The allegations contained in Paragraph 5 of the Complaint are admitted.
6. The allegations contained in Paragraph 6 of the Complaint are admitted.
7. The allegations contained in Paragraph 7 of the Complaint are admitted.

#### **GENERAL ALLEGATIONS**

8. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 of the Complaint, and therefore denies them.
9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 of the Complaint, and therefore denies them.
10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Complaint, and therefore denies them.
11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 of the Complaint, and therefore denies them.
12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 of the Complaint, and therefore denies them.
13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 of the Complaint, and therefore denies them.
14. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 of the Complaint, and therefore denies them.
15. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint, and therefore denies them.
16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 of the Complaint, and therefore denies them.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 of the Complaint, and therefore denies them.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint, and therefore denies them.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint, and therefore denies them.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 of the Complaint, and therefore denies them.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Complaint, and therefore denies them.

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint, and therefore denies them.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Complaint, and therefore denies them.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Complaint, and therefore denies them.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Complaint, and therefore denies them.

**TNT Hacks and Copies Grover's Fusion Package**

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 of the Complaint, and therefore denies them.

27. The allegations contained in Paragraph 27 of the Complaint are denied.

28. The allegations contained in Paragraph 28 of the Complaint are denied.

29. The allegations contained in Paragraph 29 of the Complaint are denied.

30. The allegations contained in Paragraph 30 of the Complaint are denied.

31. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 of the Complaint, and therefore denies them.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32 of the Complaint, and therefore denies them.

33. The allegations contained in Paragraph 33 of the Complaint are denied.

34. The allegations contained in Paragraph 34 of the Complaint are denied.

35. The allegations contained in Paragraph 35 of the Complaint are denied.

36. The allegations contained in Paragraph 36 of the Complaint are denied.

37. The allegations contained in Paragraph 37 of the Complaint are denied.

38. The allegations contained in Paragraph 38 of the Complaint are denied.

39. The allegations contained in Paragraph 39 of the Complaint are denied.

40. The allegations contained in Paragraph 40 of the Complaint are denied.

41. The allegations contained in Paragraph 41 of the Complaint are denied.

42. The allegations contained in Paragraph 42 of the Complaint are denied.

43. The allegations contained in Paragraph 43 of the Complaint are denied.

44. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 of the Complaint, and therefore denies them; however, the documents relied upon therein speak for themselves.

45. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45 of the Complaint, and therefore denies them; however, the documents relied upon therein speak for themselves.

46. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46 of the Complaint, and therefore denies them; however, the documents relied upon therein speak for themselves.

47. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 of the Complaint, and therefore denies them.

48. The allegations contained in Paragraph 48 of the Complaint are denied.

49. The allegations contained in Paragraph 49 of the Complaint are denied.

50. The allegations contained in Paragraph 50 of the Complaint are denied.

51. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51 of the Complaint, and therefore denies them.

52. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Complaint, and therefore denies them.

53. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53 of the Complaint, and therefore denies them.

54. The allegations contained in Paragraph 54 of the Complaint are denied.

55. The allegations contained in Paragraph 55 of the Complaint are denied.

56. The allegations contained in Paragraph 56 of the Complaint are denied.

57. The allegations contained in Paragraph 57 of the Complaint are denied.

**TNT Misappropriated Grover's Trade Secrets**

58. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 of the Complaint, and therefore denies them.

59. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 of the Complaint, and therefore denies them.

60. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 of the Complaint, and therefore denies them.

61. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 of the Complaint, and therefore denies them.

62. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 of the Complaint, and therefore denies them; however, the documents relied upon therein speak for themselves.

63. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63 of the Complaint, and therefore denies them.

64. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64 of the Complaint, and therefore denies them.

65. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65 of the Complaint, and therefore denies them.

66. The allegations contained in Paragraph 66 of the Complaint are denied.

67. The allegations contained in Paragraph 67 of the Complaint are denied.

68. The allegations contained in Paragraph 68 of the Complaint are denied.

69. The allegations contained in Paragraph 69 of the Complaint are denied.

70. The allegations contained in Paragraph 70 of the Complaint are denied.

71. The allegations contained in Paragraph 71 of the Complaint are denied.

72. The allegations contained in Paragraph 72 of the Complaint are denied.

73. The allegations contained in Paragraph 73 of the Complaint are denied.

**TNT's Impact on Grover and Banilla**

74. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74 of the Complaint, and therefore denies them.

75. The allegations contained in Paragraph 75 of the Complaint are denied.

76. The allegations contained in Paragraph 76 of the Complaint are denied.

77. The allegations contained in Paragraph 77 of the Complaint are denied.

78. The allegations contained in Paragraph 78 of the Complaint are denied.

79. The allegations contained in Paragraph 79 of the Complaint are denied.

80. The allegations contained in Paragraph 80 of the Complaint are denied.

**FIRST CLAIM FOR RELIEF**  
*(Grover – Copyright Infringement)*

81. To the extent an answer is required, the allegations contained in Paragraph 81 of the Complaint are denied.

82. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82 of the Complaint, and therefore denies them.

83. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 of the Complaint, and therefore denies them.

84. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84 of the Complaint, and therefore denies them.

85. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85 of the Complaint, and therefore denies them.

86. The allegations contained in Paragraph 86 of the Complaint are denied.

87. The allegations contained in Paragraph 87 of the Complaint are denied.

88. The allegations contained in Paragraph 88 of the Complaint are denied.

89. The allegations contained in Paragraph 89 of the Complaint are denied.

90. The allegations contained in Paragraph 90 of the Complaint are denied.

91. The allegations contained in Paragraph 91 of the Complaint are denied.

92. The allegations contained in Paragraph 92 of the Complaint are denied.

**SECOND CLAIM FOR RELIEF**

*(Grover – Misappropriation of Trade Secrets)*

93. To the extent an answer is required, the allegations contained in Paragraph 93 of the Complaint are denied.

94. The allegations contained in Paragraph 94 of the Complaint are denied.

95. The allegations contained in Paragraph 95 of the Complaint are denied.

96. The allegations contained in Paragraph 96 of the Complaint are denied.

97. The allegations contained in Paragraph 97 of the Complaint are denied.

98. The allegations contained in Paragraph 98 of the Complaint are denied.

99. The allegations contained in Paragraph 99 of the Complaint are denied.

100. The allegations contained in Paragraph 100 of the Complaint are denied.

101. The allegations contained in Paragraph 101 of the Complaint are denied.

102. The allegations contained in Paragraph 102 of the Complaint are denied.

103. The allegations contained in Paragraph 103 of the Complaint are denied.

**THIRD CLAIM FOR RELIEF**

*(Grover and Banilla – Unfair Methods of Competition)*

104. To the extent an answer is required, the allegations contained in Paragraph 104 of the Complaint are denied.

105. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105 of the Complaint, and therefore denies them.

106. The allegations contained in Paragraph 106 of the Complaint are denied.



107. The allegations contained in Paragraph 107 of the Complaint are denied.

108. The allegations contained in Paragraph 108 of the Complaint are denied.

109. The allegations contained in Paragraph 109 of the Complaint are denied.

110. The allegations contained in Paragraph 110 of the Complaint are denied.

111. The allegations contained in Paragraph 111 of the Complaint are denied.

112. The allegations contained in Paragraph 112 of the Complaint are denied.

#### **FOURTH CLAIM FOR RELIEF**

*(Grover and Banilla – Unfair and Deceptive Acts or Practices)*

113. To the extent an answer is required, the allegations contained in Paragraph 113 of the Complaint are denied.

114. The allegations contained in Paragraph 114 of the Complaint are denied.

115. The allegations contained in Paragraph 115 of the Complaint are denied.

116. The allegations contained in Paragraph 116 of the Complaint are denied.

117. The allegations contained in Paragraph 117 of the Complaint are denied.

118. The allegations contained in Paragraph 118 of the Complaint are denied.

119. The allegations contained in Paragraph 119 of the Complaint are denied.

#### **DEFENDANT'S AFFIRMATIVE DEFENSES**

By alleging the Affirmative Defenses set forth below, Defendant does not agree or concede that it bears the burden of proof or the burden of persuasion on any of these issues, whether in whole or in part. Defendant reserves the right to plead additional defenses as may be revealed during discovery or upon receipt of additional information concerning the nature of the claims asserted by Plaintiffs.

**First Affirmative Defense**

**(Failure to State a Claim)**

One or more claims for relief set forth in the Complaint fails to state a claim upon which relief can be granted within the meaning of Rule 12(b)(6) of the Federal Rules of Civil Procedure.

**Second Affirmative Defense**

**(Waiver, Acquiescence, Laches, and Estoppel)**

Each of the purported claims set forth in the Complaint is barred by the doctrines of waiver, acquiescence, laches, and estoppel.

**Third Affirmative Defense**

**(Invalidity of Copyrights)**

Plaintiffs' claims are barred to the extent that they lack valid copyright registrations for the intellectual property rights asserted or have not properly or timely registered such works.

**Fourth Affirmative Defense**

**(Failure to Join a Party)**

Plaintiffs' claims are barred because Plaintiffs failed to join indispensable parties.

**Fifth Affirmative Defense**

**(No Willful Infringement)**

Plaintiffs' claims are barred because the alleged infringement was not caused by a volitional act attributable to Defendant. Defendant has not directly or indirectly infringed and does not infringe (either directly or indirectly), any valid copyright or copyright rights of Plaintiffs, including, without limitation, any copyright rights in the works that are the subject of Plaintiffs' Complaint. Therefore, Defendant is not liable to Plaintiffs for copyright infringement.

**Sixth Affirmative Defense**

***(De Minimus)***

Plaintiffs' claims for copyright infringement are barred by the doctrine of *de minimus* copying, as Defendant's alleged use of the protectable portions of Plaintiffs' works has been *de minimus*.

**Seventh Affirmative Defense**

***(No Damages)***

Plaintiffs have suffered no actual damages and/or has failed to mitigate their damages, if any.

**Eighth Affirmative Defense**

***(Good Faith)***

At all times, Defendant acted in good faith and in a commercially reasonable and lawful manner.

**DEMAND FOR A JURY TRIAL**

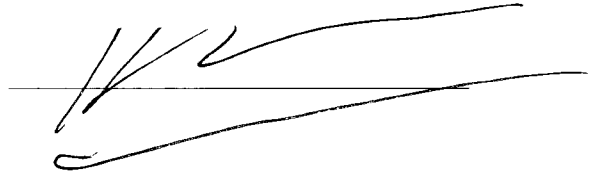
Defendant hereby respectfully requests a trial by jury.

This is the 31st day of December, 2019.

/s/ Ryan S. Luft  
Ryan S. Luft (N.C. Bar No 35717)  
Ryan S. Luft, PLLC  
Attorney for Defendant  
3125 Kathleen Ave. #116  
Greensboro, North Carolina 27408  
(336) 638-1789  
ryan@luftlaw.com

**VERIFICATION**

I, HUNG NGUYEN, being first duly sworn, depose and say that I have read the foregoing Verified Answer and Affirmative Defenses and the statements made therein with respect to me are true of my own knowledge, except those matters alleged upon information and belief, which I believe to be true.

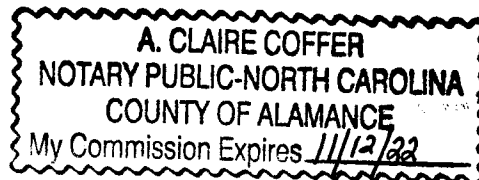


SWORN TO and subscribed before  
me this 31<sup>st</sup> day of December, 2019.

A. Claire Coffey

A. Claire Coffey

Notary Public



My Commission Expires: 11/12/22

**CERTIFICATE OF SERVICE**

I hereby certify that on date indicated below I electronically filed the foregoing document(s) with the Clerk of Court using the CM/ECF system which will send notification of such filing to the parties of record.

This the 2nd day of January, 2020.

/s/ Ryan S. Luft

Ryan S. Luft (N.C. Bar No. 35717)

Ryan S. Luft, PLLC

*Attorney for Defendant*

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